

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

ELCOMETER, INC., a
Michigan corporation,

Case No. 4:12-cv-14628-NGE-PJK

Plaintiff,

Hon. Gershwin A. Drain

v.

TQC-USA, Inc., a Michigan corporation,
PAINTMETER.COM, a foreign corporation,
and ROBERT THOREN, an individual.

Defendants.

MILLER, CANFIELD, PADDOCK and
STONE, P.L.C.

A. Michael Palizzi (P47262)

Joseph G. Vernon (P68951)

Attorneys for Plaintiff

150 West Jefferson Ave., Suite 2500

Detroit, MI 48226

Telephone: (313) 963-6420

Fax: (313) 496-8453

palizzi@millercanfield.com

vernon@millercanfield.com

GIFFORD, KRASS, SPRINKLE,

ANDERSON & CITKOWSKI, P.C.

Attorneys for Defendant TQC-USA, Inc.

Thomas E. Anderson (P32564)

Erin Morgan Klug (P73361)

2701 Troy Center Dr., Suite 330

Troy, MI 48007-7021

litigation@patlaw.com

(248) 647-6000

AMENDED ORDER GRANTING
PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT

This matter having come before the Court on Plaintiff Elcometer, Inc.'s ("Plaintiff") motion pursuant to Rules 55 and 65 of the Federal Rules of Civil Procedure; the Court having reviewed Plaintiff's Motion and Brief for Default Judgment including Permanent Injunction (Dkt. no. 38); having granted Plaintiff's Motion for Default Judgment, (Dkt. no. 45); having reviewed Plaintiff's Hearing

Brief on the Issue of Damages, (Dkt. no. 54), having reviewed the Expert Report of Rodney L. Crawford on the Issue of Damages, (Dkt. no. 56); having received no response from Defendants Robert Thoren (“Thoren”) and Paintmeter.com (“Paintmeter”); having conducted a hearing on the issue of damages on February 14, 2014, which was attended by counsel for Elcometer, Inc. and counsel for TQC-USA, Inc.; and the Court otherwise being fully apprised of the premises; the Court has determined the following:

1. Plaintiff has suffered an economic injury as a result of Paintmeter’s and Thoren’s willful, unauthorized use of the Elcometer® trademark.
2. Plaintiff has presented substantial evidence in the record for the Court to draw reasonable inferences and make a fair and reasonable assessment of the amount of damages arising out of Paintmeter’s and Thoren’s tortious behavior.
3. Plaintiff has suffered an irreparable injury.
4. Plaintiff has no adequate remedy at law. Paintmeter’s and Thoren’s willful, unauthorized use of the Elcometer® trademark has resulted in irreparable injury to Elcometer and the goodwill associated with its trademark. Further, Paintmeter’s and Thoren’s willful, unauthorized use of the Elcometer® trademark has infringed on Plaintiff’s exclusive right in its protected intellectual property. This harm is not fully compensable through money damages and constitutes irreparable harm.

5. Considering the balance of hardships between the plaintiff and defendant, a permanent injunction is warranted.

6. A permanent injunction will serve the public interest by preventing potential consumer confusion in the market place.

IT IS HEREBY ORDERED AND ADJUDGED that judgment be and hereby is entered in favor of Plaintiff Elcometer, Inc., and against the Defendants Paintmeter.com and Robert Thoren, jointly and severally, in the following amounts:

A. \$363,835.00 USD, trebled as permitted by the Lanham Act, in compensation for Elcometer, Inc.'s lost profits, for a total of \$1,091,505.00 USD;

B. \$255,954.00 USD, in compensation for Elcometer, Inc.'s direct out-of-pocket expenses incurred to neutralize the willful and wrongful actions of Defendants;

C. Attorney's fees and costs, to be determined at a later date.

IT IS FURTHER ORDERED that, until further order of this Court:

A. Defendants Paintmeter.com and Robert Thoren, and all those acting in concert with them, are permanently enjoined from using or displaying the Elcometer® trademark, including on any website, including, but not limited to, www.paintmeter.com and www.elcometersales.com;

B. Defendants Paintmeter.com and Robert Thoren, and all those acting in concert with them, must permanently remove any reference to Elcometer on www.paintmeter.com, www.elcometersales.com, or any other websites they control;

C. Defendants Paintmeter.com and Robert Thoren, and all those acting in concert with them, must immediately and permanently cease and desist from making any representation that they are authorized dealers or distributors of Elcometer® products, or presently affiliated in any way with Elcometer;

D. Control of the phone numbers 1-800-974-2492 and 507-264-0192 shall immediately and permanently be transferred to Elcometer by the Responsible Organization or service carrier responsible for the numbers;

E. The domain www.elcometersales.com shall immediately and permanently be transferred to Elcometer for Elcometer's permanent control;

F. The domain www.paintmeter.com shall remain in Elcometer's control;

IT IS FURTHER ORDERED that this Order may be presented to the service providers necessary to effectuate the transfers referenced in this Order in items D, E, and F above.

IT IS FURTHER ORDERED that this Order may be presented to the Department of State for submission to foreign authorities through diplomatic

channels should letters rogatory be necessary to effect the relief granted in this Order.

IT IS FURTHER ORDERED that no bond is required for the reason that Defendant will suffer no pecuniary loss or damage by reasons hereof.

IT IS SO ORDERED.

/s/Gershwin A Drain
U.S. District Court Judge

Entered this 8th Day of April 2014

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